IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11568 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GULAM MOHMEED YUSUFBHAI TAI

Versus

STATE OF GUJARAT

Appearance:

MS KRISHNA U MISHRA for Petitioner

MS. HANSA PUNANI, A.G.P for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 03/05/2001

ORAL JUDGEMENT

1. This petition can be allowed only on the ground of delay in forwarding the representation made by the detenu.

2. The petitioner came to be detained as a dangerous person on 13th September, 2000 by virtue of an order passed by Commissioner of Police, Surat. The said order of detention was challenged on various grounds in this petition under Article 226 of the Constitution of India. However, the only contention that is pressed in to service by Ms. Mishra appearing for the petitioner is that, there is delay in forwarding the representation made on behalf of the detenu. She has supported her argument with the affidavit in reply filed by the detaining Authority in paragraph 8 of the affidavit in reply. It is stated by the detaining Authority that a representation dated 03.11.2000 was received, and was forwarded to the State Government on 16.11.2000. Ms.Mishra therefore submitted that, there is a delay in forwarding the representation which has resulted into infringement of the right of the detenu of making an affective representation envisaged under Article 22 (5) of the Constitution of India, and therefore, the continued detention of the petitioner is bad in law.

3. Ms. Punani, appearing for the respondent has opposed this petition. According to her the representation was received on 04.11.2000 and was forwarded on 16.11.2000 after following due procedure and collecting the relevant material. As such, there was no delay, and the petition may be dismissed.

4. Having regard to the contention raised before this Court, admittedly the detaining Authority had become functus-officio prior to 04.11.2000, when the representation was received by the detaining Authority. The only thing that the detaining Authority was expected to do was to immediately forward the representation to the State Government for its consideration, but instead the detaining Authority took 15 days to forward the said representation to the State Government. No explanation is tendered in the affidavit in reply to explain the delay. The right of the detenu of making an affective representation is therefore infringed and the detenu's continued detention would therefore be vitiated. The petition therefore deserves to be allowed.

5. In view of the above discussion the petition is allowed. The impugned order of detention dated 13th September, 2000 passed against the detenu - Gulam Mohhmeed Yusufbhai Tai is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made

absolute with no orders as to costs.

(A.L.DAVE, J.)

siji